



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Environmental Tectonics Corporation

File: B-225474.5

Date: July 28, 1987

DIGEST

Where the General Accounting Office sustains protest and recommends that discussions be reopened so as to allow the protester a renewed opportunity to compete for the award under the protested solicitation, the award of the protester's costs of filing its protest, including attorney's fees, is inappropriate.

DECISION

Environmental Tectonics Corporation (ETC) requests that we modify our recommendation in Environmental Tectonics Corp., B-225474, Feb. 17, 1987, 87-1 CPD ¶ 175, aff'd on reconsideration, B-225474.2 et al., Apr. 9, 1987, 87-1 CPD ¶ 391, to include a grant of the firm's costs of filing and pursuing its protest, including attorney's fees pursuant to our Bid Protest Regulation, 4 C.F.R. § 21.6(d)(1) (1986). We deny the request for costs.

In our original decision we recommended that the Navy reopen discussions with all offerors within the competitive range on grounds that the awardee, CACI, Inc.--Federal, had been improperly allowed to submit a late modification to its best and final offer. We also recommended that the contract with CACI be terminated for the convenience of the government if it was not the successful offeror at the conclusion of discussions. Upon reconsideration, we affirmed our original recommendation. It is our understanding that the Navy is complying with our recommendation for reopening of discussions and recently has issued a new request for best and final offers.

ETC argues that we have on previous occasions allowed the recovery of the costs of filing and pursuing a protest even where we recommended that the procurement be reopened so as to allow the protester an opportunity to compete, and specifically directs our attention to our decision in AT&T Information Services, Inc., B-223914, Oct. 23, 1986, 66 Comp. Gen. ____ (1986), 86-2 CPD ¶ 447.

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Our regulations permit the recovery of the costs of filing and pursuing a protest in situations where the protester is unreasonably excluded from the procurement, except where this Office recommends that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(e). Generally, we have interpreted the regulation as limiting the remedy of protest costs to those situations where a successful protester does not otherwise receive a remedy. As ETC points out, we have allowed protest costs where we have concluded that a sole-source award was improper and have recommended that the requirement be resolicited competitively, even though the protester may receive a remedy in addition to protest costs. We have allowed costs in this situation because to do so is consistent with a key purpose of CICA, which is to promote full and open competition. It is our intent to promote that purpose by encouraging protests of improper sole-source procurements. Here, however, we regard the relief offered ETC--the chance to have its existing proposal considered for award under renewed competition--as a sufficient remedy within the intent of our regulations, without granting protest costs as an additional remedy.

Harry R. Van Cleve

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General Counsel